Nos. 04-55, 04-57

In The Supreme Court of the United States

STATE OF MICHIGAN, ET AL.,

Petitioners,

v.

YELLOW TRANSPORTATION, INC.,

Respondent.

STATE OF MICHIGAN, ET AL.,

Petitioners,

v.

SCHNEIDER NATIONAL CARRIERS, INC., ET AL.,

Respondents.

On Petitions For Writ Of Certiorari To The Michigan Court Of Appeals

BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress in 1991 directed the former Interstate Commerce Commission ("ICC") to prescribe new and more simplified standards under which states are permitted to charge fees for registration of interstate motor carrier operations. 49 U.S.C. §11506(c)(1) It specified that these new standards "shall establish a fee system" that "will result in a fee for each participating State that is equal to the fee * * * that such State collected or charged as of November 15, 1991." 49 U.S.C. §11506(c)(2)(B)(iv)(III). In interpreting these standards, the ICC specifically ruled that the term "fee * * * collected or charged as of November 15, 1991" would be interpreted to refer to the fees which a state was collecting or charging to allow operations on November 15, 1991, rather than to fees which a state might have announced and begun to receive in advance of that date for operations during 1992.

The question presented is whether the Michigan Court of Appeals was correct in affording deference to the ICC's finding under principles announced by this Court in *Chevron USA, Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984) and *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002).

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceedings are set forth in the case caption. Yellow Transportation, Inc., Respondent in No. 04-55, is a wholly owned subsidiary of Yellow Roadway Corporation, a publicly held corporation. The Respondents in No. 04-57, Schneider National Carriers, Inc.; Schneider Transport, Inc.; Schneider National Bulk Carriers, Inc.; Schneider Tank Lines, Inc.; and Schneider Specialized Carriers, Inc. are wholly owned subsidiaries of Schneider National, Inc. No publicly held corporation owns ten percent or more of the stock of Schneider National, Inc.

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RESPONSE TO PETITIONS FOR WRIT OF CERTIORARI

Respondents Yellow Transportation, Inc. ("Yellow"); Schneider National Carriers, Inc.; Schneider Transport, Inc.; Schneider National Bulk Carriers, Inc.; Schneider Tank Lines, Inc.; and Schneider Specialized Carriers, Inc.; (collectively, "Schneider") submit their joint[1] Brief in Opposition to the Petitions for Writ of Certiorari in Nos. 04-55 and 04-57.

OPINIONS AND ORDERS BELOW

No. 04-55

1. *Yellow Freight System, Inc. v. State of Michigan*, Michigan Court of Claims, March 13, 1996 ("*Yellow Freight I*") (Yellow Pet. App. 26a-29a)

2. *Yellow Freight System, Inc. v. Michigan*, 231 Mich. App. 194, 585 N.W.2d 762 (1998) (Resp. App. 22b-39b) ("*Yellow Freight II*") (affirming *Yellow Freight I*)

3. *Yellow Freight System, Inc. v. Michigan*, Michigan Court of Appeals, November 18, 1998 (denying rehearing)

4. *Yellow Freight System, Inc. v. Michigan*, 464 Mich. 21, 627 N.W.2d 236 (2001) ("*Yellow Freight III*") (reversing *Yellow Freight II*)

[1] Because the Petitions and underlying issues in Nos. 04-55 and 04-57 are virtually identical, Respondents have elected to file a joint response. Appendix references to "Yellow Pet. App." and "Schneider Pet. App." will refer to Petitioners' Appendices in Nos. 04-55 and 04-57 respectively.

5. *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002) (Resp. App. 40b-55b) ("*Yellow Transportation IV*") (reversing *Yellow Freight III*)

6. *Yellow Freight System, Inc. v. Michigan*, 468 Mich. 862, 659 N.W.2d 229 (Table) (2003) (vacating *Yellow Freight III*)

7. *Yellow Transportation, Inc. v. Michigan*, 257 Mich. App. 602, 669 N.W.2d 553 (2003) (Yellow Pet. App. 3a-21a) ("*Yellow Transportation V*") (reaffirming *Yellow Freight II*)

8. *Yellow Transportation, Inc. v. Michigan*, 469 Mich. 1026, 677 N.W.2d 331 (2004) (Yellow Pet. App. 1a-2a) (denying leave to appeal)

No. 04-57

1. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Claims, March 13, 1996 (Schneider Pet. App. 11a-22a) ("*Schneider I*")

2. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Appeals, May 14, 1999 (Schneider Pet. App. 8a-10a) ("*Schneider II*") (reversing *Schneider I*)

3. *Schneider National Carriers, Inc., et al. v. Michigan*, 464 Mich. 867, 631 N.W.2d 343 (2001) (vacating *Schneider II* and remanding for reconsideration in light of *Yellow Freight III*)

4. *Schneider National Carriers, Inc., et al. v. Michigan*, 247 Mich. App. 716; 637 N.W.2d 838 (2001) ("*Schneider III*") (deciding issues not addressed in *Schneider II*)

5. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Appeals, December 7, 2001 (denying rehearing of *Schneider III*)

6. *Schneider National Carriers, Inc., et al. v. Michigan*, 468 Mich. 862, 659 N.W.2d 228 (2003) (Schneider Pet. App. 6a-7a) (vacating *Schneider III*)

7. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Appeals, August 5, 2003 (Schneider Pet. App. 3a-5a) ("*Schneider IV*") (reaffirming *Schneider II*)

8. *Schneider National Carriers, Inc., et al. v. Michigan*, 469 Mich. 1026, 677 N.W.2d 331 (2004) (Schneider Pet. App. 1a-2a) (denying leave to appeal)

STATEMENT OF THE CASE

These cases involve an interpretation of an almost infinitesimally minor detail of a regulatory statute by the former Interstate Commerce Commission ("ICC"), with which the State of Michigan and its regulatory agency, the Michigan Public Service Commission ("MPSC"), have elected to disagree. No other state has followed Michigan's interpretation, which was accepted by only two of the 17 judges who considered these cases in the Michigan courts, and there have been no other cases involving this issue.

The statutory provision in question, 49 U.S.C. §11506(c)(2)(B)(iv)(III),[2] provides that a state may assess a fee for certain commercial motor vehicle registrations only if that fee is "equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of November

[2] Recodified as 49 U.S.C. §14504 effective January 1, 1996. References in this brief are to the original version.

15, 1991." In the course of its proceeding interpreting and implementing this statute at the direction of Congress, the ICC specifically addressed how it would apply this language to a situation in which a state was charging no fees for operations on November 15, 1991 itself but prior to that date had announced and begun to collect fees in advance for periods beginning after November 15, 1991.

Congress not surprisingly had been silent on this question in enacting the statute. The ICC, however, concluded that the statutory language should be read to base the fee limits on fees being charged and collected for operations on the November 15, 1991 determination date rather than on fees for future periods which states had begun to receive in advance of that date. *American Trucking Associations – Petition for Declaratory Order – Single State Insurance Regulation*, 9 ICC 2d 1184, 1192, 1195 (1993) (14b, 18b). Michigan, however, refuses to defer to this interpretation under the *Chevron*[3] doctrine, notwithstanding the clear indication to the contrary provided by this Court's prior opinion[4] in this very case issued less than 20 months ago.

1. Regulatory Background

The issue in these cases arises from actions by the Respondent motor carriers to obtain refunds of motor vehicle registration fees improperly collected by the MPSC. At all times pertinent to this litigation, Respondents have

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[3] *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[4] *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002) (40b-55b).

been for-hire motor carriers performing transportation in interstate commerce under certificates and permits issued by the ICC and its successors.[5] For years prior to 1994, Congress through a predecessor version of 49 U.S.C. §11506 had permitted states to require registration of interstate carrier certificates or permits as long as that registration complied with standards issued by the ICC, including a maximum fee[6] of $10 per vehicle. Carriers paid such fees separately to each state and were issued individual "bingo stamps" for each vehicle, to be placed on a multi-state "bingo card" carried in the vehicle cab.

For calendar year 1991, the system which Michigan had established included a reciprocity arrangement for registering vehicles which were commercially plated in Illinois. As stated by the affidavit of Michigan's most responsible official in this area, Thomas Lonergan, Michigan in 1989 began a policy under MCL 478.7(4) of not charging registration fees to carriers with vehicles registered in states which did not charge Michigan-based vehicles a fee. (Yellow Pet. App. 32a) Illinois was one of

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[5] Effective January 1, 1996, the U.S. Department of Transportation assumed the duties formerly performed by the ICC, including administration of the former ICC regulations at 49 C.F.R. ICC Termination Act of 1995, Pub. L. 104-88, December 29, 1995, 109 Stat. 803, §204; 49 U.S.C. §702. Within that agency, these duties were assumed initially by the Federal Highway Administration and, beginning in 2000, by the Federal Motor Carrier Safety Administration. 49 U.S.C. §113 (Supp. V 1999)

[6] Michigan's vehicle registration fee for interstate operations is set forth at Mich. Comp. Laws 478.7, enacted in 1988. Under Mich. Comp. Laws 478.7(4), the annual fee for each vehicle operated in the state under Mich. Comp. Laws 478.7 is $10. The MPSC is permitted to enter into reciprocal agreements with other states which do not charge fees to vehicles licensed in Michigan and is permitted to waive the $10.00 fee in such situations. Yellow Pet. App. 48a.

these states. In calendar years 1990 and 1991, carriers such as Yellow and Schneider were not charged vehicle registration fees for any of their vehicles which were commercially plated in Illinois. [Yellow Pet. App. 32a; Affidavit of Thomas R. Lonergan, November 21, 1996, in *Schneider I*, ¶7(c)] For the registration year beginning February 1, 1992, however, Michigan changed its policy and announced that carriers such as Yellow and Schneider would be charged $10 for each of their Illinois-based vehicles.[7]

On December 18, 1991, the President signed into law the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 2146, December 18, 1991 ("ISTEA"). Section 405 of ISTEA modified 49 U.S.C. §11506 to create a streamlined and more efficient system ("Single State Registration System" or "SSRS") for registering vehicles of interstate for-hire motor carriers. The SSRS modifications replaced the former multiple-payment "bingo stamp" system with a "single state" filing concept. Under this system, carriers submitted filings and payments to their home states which covered vehicle registrations and fees for all states in which they operated. The registration states then sent registrations and fees to all other states. The statute provided that states could assess

[7] Michigan made this change by altering its methodology for determining reciprocity. The specific alteration involved applying reciprocity exemptions based on the states in which carriers such as Yellow and Schneider maintained their principal places of business (Kansas in Yellow's case, Wisconsin in Schneider's case) rather than the states in which the vehicles themselves were commercially plated. This change had the effect of eliminating reciprocity fee exemptions for vehicles commercially plated in fee-exempt states such as Illinois if the owners of such vehicles maintained their principal places of business in non fee-exempt states such as Kansas or Wisconsin.

a fee only if the fee was "equal to the fee, not to exceed $10.00 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. §11506(c)(2)(B)(iv)(III) The statute indicated that the charging of any fees not established by the ICC under SSRS would be deemed a "burden on interstate commerce" so as to be contrary to the Commerce Clause of the U.S. Constitution.[8] 49 U.S.C. §11506(c)(2)(C) (*Yellow Transportation IV* at 43b) Congress specifically directed the ICC to develop standards and regulations to implement the new system. 49 U.S.C. §11506(c)(1)

The ICC's initial proceeding concerning standards for vehicle registration under ISTEA was *Single State Insurance Registration*, 9 ICC 2d 610 (1993). ("*Single State*") Michigan participated as a party in that case. *Single State* at 9 ICC 2d 641. The ICC codified certain of its implementing standards in revised regulations issued at 49 C.F.R. §1023. Other standards merely were expressed in the body of the *Single State* decision. Later that same year, the ICC opened a supplemental notice and comment proceeding and issued additional standards for applying ISTEA. *American Trucking, supra*, 9 ICC 2d 1184 (3b-21b)

As noted above, the decision in *American Trucking* is particularly significant to this case because it addresses the substantive issue of this petition. As indicated previously, carriers such as Yellow and Schneider which operated vehicles commercially plated in Illinois were paying no fees to Michigan for operation of those vehicles in Michigan as of the determination date under ISTEA of November 15, 1991. Michigan, however, had announced

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[8] *U. S. Constitution, Article I, Section 8, Clause 3.*

increased 1992 fees for such vehicles prior to that date and had begun to accept advance payments of those fees.

After learning that Michigan intended to claim that its announcement and advance collection of future fees made such fees "collected or charged as of November 15, 1991" within the meaning of ISTEA, Yellow submitted the fee calculation question to the ICC through comments in the *American Trucking* proceeding. In those comments, Yellow specifically raised the issue of whether the statutory language limiting fees to those "collected or charged as of November 15, 1991" related to the fees charged for actual operations on that date, as opposed to fees which states might have begun to collect on that date for the succeeding year. The ICC's decision described Yellow's position as follows:

> Yellow raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10.00 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane. *American Trucking*, at 9 ICC 2d 1192. (14b)

The ICC responded to Yellow's position as follows:

> *Other matters.* Yellow has raised the issue of whether the statutory language concerning the

> "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find. *American Trucking* at 9 ICC 2d 1195. (18b)

The ICC thus held that a state such as Michigan which had charged fees of zero for operations of particular categories of vehicles on November 15, 1991, was required to continue to charge zero fees for those vehicle categories under the ISTEA statute, even though prior to November 15, 1991, it had announced higher fees for the following year and begun to accept voluntary payments of those fees. This is the precise finding which Yellow and Schneider have sought to apply in these cases.

2. Litigation History

As a result of the ISTEA legislation and the ICC's subsequent implementation actions, Yellow and Schneider made specific inquiries to confirm that vehicles commercially plated in Illinois could be registered for Michigan operations without a fee payment, in the same manner as had been the case for calendar year 1991. They were told, however, that Michigan insisted on a full $10.00 per vehicle fee for Illinois-based vehicles if carriers' principal places of business were located in non-exempt states. Yellow and Schneider accordingly submitted such payments for Michigan to their base states (Kansas or Wisconsin) indicating that such payments were under protest. They subsequently filed verified notices of claim with the Michigan Court of Claims with respect to these fee payments and

then filed Complaints with the Michigan Court of Claims seeking a refund and future relief.

In the Yellow litigation, following cross motions for summary disposition, the Michigan Court of Claims on March 13, 1996 issued its opinion in *Yellow Freight I* granting summary disposition for Yellow. The Court of Claims opinion was based on its finding that it was required to follow the ICC's resolution of the fee issue under the ISTEA as set forth in *American Trucking*. (Yellow Pet. App. 28a-29a) On Michigan's appeal, the Michigan Court of Appeals issued its opinion in *Yellow Freight II* affirming the Michigan Court of Claims. (22b-39b)

In the Schneider litigation, again following cross motions for summary disposition, the Michigan Court of Claims on November 24, 1997 issued its opinion in *Schneider I* granting summary disposition for Michigan. (Schneider Pet. App. 21a) On Schneider's appeal, the Michigan Court of Appeals issued its opinion in *Schneider II* reversing the Michigan Court of Claims on the basis of *Yellow Freight II*. (Schneider Pet. App. 9a-10a)

Michigan filed applications for leave to appeal both cases to the Michigan Supreme Court. Leave to appeal was granted in *Yellow* and the Michigan Supreme Court issued its decision in *Yellow Freight III*. The *Yellow Freight III* decision impliedly accepted the position of the Michigan Court of Appeals in *Yellow Freight II* and *Schneider II* but rejected Yellow's claim for fee exempt status on a different basis. The *Yellow Freight III* court took the position that Michigan's non-application of its registration fees to carriers such as Yellow and Schneider as of November 15, 1991 was not required to be given continuing effect because this non-application was based on reciprocity agreements

and because the ICC had erred in giving continuing effect to such agreements. *Yellow Freight III, supra* at 464 Mich. 32. Yellow then sought and was granted certiorari culminating in this Court's opinion in *Yellow Transportation IV* on November 5, 2002.[9]

The *Yellow Transportation IV* opinion held that *Yellow Freight III* was incorrect in finding that the ISTEA language unambiguously precluded the position adopted by the ICC and advanced by Yellow. It referred extensively to the ICC opinions in *Single State* and *American Trucking* adopting standards for implementing ISTEA and found the ICC's justification for those standards reasonable. *Yellow Transportation IV* at 44b, 49b-52b. The opinion noted that although ISTEA was silent on the issue of whether or not reciprocity agreements should be considered in determining the level of fees required to be frozen, it was the ICC's proper role to resolve any ambiguities and fill in any holes in the statutory scheme. (51b) This Court accordingly ordered that the opinion in *Yellow Freight III* be reversed and that the case be remanded for further proceedings not inconsistent with the opinion in *Yellow Transportation IV.* (52b)

On remand, the Michigan Supreme Court entered orders in the *Yellow* and *Schneider* proceedings vacating

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[9] In the Schneider litigation, following the issuance of *Yellow Freight III*, the Michigan Supreme Court vacated *Schneider II* and remanded the case to the Michigan Court of Appeals for resolution of remaining issues in light of *Yellow Freight III*. The Court of Appeals decided those issues in *Schneider III*, partly in Schneider's favor and partly in Michigan's favor. Schneider then applied for leave to appeal *Schneider III* to the Michigan Supreme Court. Schneider's application was ordered held in abeyance pending the outcome of *Yellow Transportation IV*.

Yellow Freight III and *Schneider III* and remanding the cases to the Michigan Court of Appeals.[10] In *Yellow Transportation V*, the Michigan Court of Appeals reaffirmed its prior decision in *Yellow Freight II*, stating that its *Yellow Freight II* decision "stands on substantially stronger ground" as a result of this Court's decision in *Yellow Transportation IV*. (Yellow Pet. App. 9a) The Michigan Court of Appeals also issued an opinion in *Schneider IV* adopting the same conclusion it reached in *Yellow Transportation V*. (Schneider Pet. App. 5a) The Michigan Supreme Court issued identical orders on April 9, 2004 denying applications for leave to appeal the *Yellow Transportation V* and *Schneider IV* opinions.

REASONS FOR DENYING THE PETITIONS

Nothing in these petitions warrants the Court's further attention. The Court already has given explicit instruction in *Yellow Transportation IV* as to how the *Chevron* principles should be applied to the statute and agency determinations involved in this case. Since the ICC announced its interpretation more than ten years ago, no other state has sought to challenge the ICC's interpretation or apply the fee date provisions of the statute in the same manner as Michigan. There are no other cases – anywhere – involving the fee date interpretation issue. Of

[10] The remand order in part directed the parties to brief two issues which had been raised by the Solicitor General in his *amicus* brief in *Yellow Transportation IV*. On brief, all parties agreed that these issues either had been waived or had no bearing on the remaining issues in the case. *Yellow Transportation V* at 7, 8. Michigan did not raise either of these issues in its Applications for Leave to Appeal to the Michigan Supreme Court following *Yellow Transportation V* or *Schneider IV*.

the 17 Michigan judges who considered this issue at the various stages of the Michigan court proceedings, only two accepted Michigan's interpretation. No action is needed from this Court[11] to prolong Michigan's untenable position that its theory reflects the sole permissible construction of the statutory fee date language and that the ICC's interpretation of the statute thus can be disregarded.

Michigan, moreover, does not contend that the Michigan courts misstated the applicable law. Michigan agrees that the applicable standard for determining whether deference must be afforded to the ICC's ruling in *American Trucking* is that set forth in *Yellow Transportation IV*. It cites no instance where the Michigan courts misstated this standard or otherwise failed to articulate a proper explanation of how this Court's *Chevron* standard should be applied. Michigan's position that *Chevron* deference is required only where a statute is ambiguous also is accepted in the Michigan court decisions. *Yellow Freight II* at 27b; *Yellow Transportation V* at Yellow Pet. App. 9a Michigan's only criticism of its own courts' actions is that they failed to interpret the involved portion of the ISTEA

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[11] The issue in this case is distinct from the issues in the group of three cases currently pending before this Court in Nos. 03-1230, 03-1234 and 03-1250. While those cases also involve per-vehicle fees charged to motor carriers by the MPSC, the fees arise under a different statutory provision applicable only to vehicles commercially plated in Michigan [Mich. Comp. Laws 478.2(2)]. Nos. 03-1230 and 03-1250 do not involve the ISTEA statute; No. 03-1234 does not involve a prior agency interpretation of ISTEA so as to require *Chevron* deference. A Michigan filing with this Court has distinguished the case in No. 03-1234 as one in which "neither action by nor an order of a federal agency is at issue." Brief of Respondents Michigan Public Service Commission, *et al.* in Opposition to Petition for Writ of Certiorari, No. 03-1234, *Mid-Con Freight Systems, Inc. v. Michigan Public Service Commission*, May 3, 2004 at 19.

statute as unambiguously requiring the position advanced by Michigan. At best, such an argument is nothing more than a claim of misapplication of a properly stated rule of law which is not appropriate for a grant of certiorari. Sup. Ct. R. 10

I. The ICC's Ruling in *American Trucking* is Based on a Reasonable Interpretation of ISTEA Which is Entitled to Deference Under *Chevron* and *Yellow Transportation IV.*

The decisions of the Michigan Court of Appeals in *Yellow Freight II*, *Schneider II*, *Yellow Transportation V*, and *Schneider IV* represent solidly based determinations that the ICC's resolution of the fee date issue in *American Trucking* constitutes a reasonable interpretation which is not foreclosed by the specific language of the ISTEA statute. The issue faced by the ICC in *American Trucking* and by the Court of Appeals in *Yellow Freight II* was application of the pertinent portion of ISTEA to the bingo stamp fee practices in place as of November 15, 1991. As noted previously, the pertinent portion of ISTEA requires that states establish a fee system that "will result in a fee * * * that is equal to the fee, not to exceed $10 per vehicle, that such state collected or charged as of November 15, 1991." 49 U.S.C. §11506(c)(2)(B)(iv)(III).

It is undisputed that on November 15, 1991, Michigan did not require payment of *any* registration fees for vehicles which were commercially plated in Illinois. This fact is established by affidavit evidence submitted by Michigan itself through its primary witness, Thomas Lonergan. Witness Lonergan stated that at the time pertinent to this case,

* * *

> i. The [Michigan] Public Service Commission made a policy decision not to charge a fee to carriers with vehicles registered in states or provinces which did not charge Michigan-based carriers a fee.
>
> j. Under the above-described system, Yellow Freight which had 3,730 vehicles base plated in Illinois and Indiana, was not charged for those cab card stamps as those states did not charge fees for vehicles based in Michigan. * * * *This system was in effect for calendar years 1990 and 1991.* (Yellow Pet. App. 32a) (emphasis added)

This affidavit accordingly indicates that the zero fee system applicable to Yellow, Schneider and other similarly situated carriers would have been in effect on the determination date under the ISTEA statute, November 15, 1991.

Michigan does not claim that its September 1991 announcement of a new policy for 1992 had any impact on the operations of carriers during 1991. It presented no evidence of any instance in which it sought to require carriers that would have been subject to higher fees under the 1992 system to also pay these higher fees for the portion of 1991 following the date of the September 1991 announcement. To the contrary, Michigan's own documentation makes it clear that the zero fee policy for Illinois-plated vehicles would have applied to the specific situation in which a motor carrier might have sought to register vehicles for Michigan operations on the actual determination date of November 15, 1991, itself.

In the Instructions to the Interstate Cab Card Stamp Application provided by witness Lonergan for the operating

year beginning February 1, 1991 (1b-2b), Michigan told carriers that when the application form was used to apply for registration stamps as a part of an annual renewal, another blank form would be returned with the stamps "for possible use *during* the time period to *add additional vehicles* to your fleet" (emphasis added). The Instructions also provided that the annual time period to which the Instructions were applicable was the period from February 1 until January 31 of the following year and that the stamp fees were "subject to change annually."

Under these Instructions, in other words, if a carrier had needed to add additional Illinois-plated units to its Michigan interstate fleet to perform operations between November 15, 1991, and the end of the 1991 registration year, it would have registered those vehicles using the same forms as it used initially to register vehicles for the 1991 registration period and would have been entitled to the same per-vehicle fee of zero that had been applicable at the beginning of that period. Within the meaning of the statutory language, it thus is clear that "the fee * * * collected or charged as of November 15, 1991" to allow Illinois-plated vehicles to operate in Michigan on that date was *zero*.

Although Michigan argues that ISTEA can be interpreted to treat Michigan's advance acceptance of higher 1992 fees before November 15, 1991, as "collection" or "charging" of those fees as of that date, the statutory language does not foreclose the interpretation reached by the ICC. Among the dictionary definitions of "collect" or its derivatives are "to obtain payment or liquidation of * * * a

debt or claim"[12] and "debts, obligations, demands, liabilities that one may be made to pay by means of legal process."[13] Dictionary definitions of the alternative statutory term "charge" include "to impose a burden, duty, obligation or lien; to create a claim against property; to demand, * * * to impose a tax, duty, or trust; * * * to bill or invoice."[14] All of the foregoing definitions suggest that in order for an amount to be "collected," the amount must be owed, and that in order for an amount to be "charged," the amount must be demanded or made due.

As the 1992 fees would not have been due until February 1, 1992, the above definitions would suggest that Michigan's willingness to accept voluntary advance payments of these fees on November 15, 1991 would not constitute "collection" or "charging" of these fees. This conclusion was stated expressly by the Michigan Court of Appeals as a basis for concluding that the ICC's interpretation was preferable. *Yellow Freight II* at 28b, *Schneider II* at Schneider Pet. App. 9a Choosing the fees that were actually required on that date, rather than fees that were being paid voluntarily in advance, constitutes a logical choice on the part of the ICC in accord with accepted usage of the statutory terms "collected" and "charged."

Chevron and its following case law do not permit courts to substitute their interpretation of a statute for that of an agency when multiple interpretations of the statute are possible. The test under the *Chevron* case law rather is whether the underlying statute "unambiguously

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[12] *Black's Law Dictionary, Fourth Edition* (1951)

[13] *Id.*

[14] *Id.*

forbids the Agency's interpretation," is "manifestly contrary to the statute", or is "arbitrary or capricious in substance." *Barnhart v. Walton*, 535 U.S. 212, 218 (2002); *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001). Nothing in the ICC's interpretation of the statute can be found to be so profoundly contrary to the statutory language so as to fall into these categories.

The ICC's interpretation also makes more sense than the interpretation advanced by Michigan in furthering the overall legislative purpose of Congress in enacting the ISTEA statute. The clear purpose of the statute was to guarantee that motor carriers would not be required to pay increases in fee levels beyond those in place as of November 15, 1991. As the Solicitor General noted in his prior brief to this Court, "there is no indication that Congress intended to allow the States to raise their registration fees at the expense of motor carriers; indeed, Congress gave every indication that it intended to minimize the costs of state registration." *Amicus Curiae* Brief of the United States in *Yellow Transportation IV* at 11 The U.S. House Conference Report described the purpose of this statutory language as follows:

> States will not be allowed to charge a greater fee * * * than the fee they charge under the former program as of November 15, 1991. *H.R. Conf. Rep. No. 404*, 102 Cong., First Sess. 437 (1991) reprinted in 1991 U.S.C.C.A.N. at 1818

The ICC also stated in its general rulemaking proceeding that the purpose of the statute was that "fees be frozen as of November 15, 1991," so as to cause "the burden of the registration system for carriers [to] be reduced." *Single State* at 9 ICC 2d 618. The U.S. Court of Appeals for the District of Columbia stated that the purpose of the statute

was that a "state may not charge more than was charged or collected in the past." *National Association of Regulatory Commissioners v. ICC*, 41 F.3d 721, 729 (D.C. Cir. 1994) (emphasis added) None of these purposes would be served by interpreting the ISTEA statute to allow Michigan to charge the higher 1992 fees to carriers such as Yellow or Schneider that were paying no fees at all for operations on the ISTEA determination date itself.

Whether or not the ICC's interpretation is the only possible reading of the statute, it clearly is a reasonable and thus permissible one. To paraphrase the Court's opinion in *Barnhart v. Walton*, "The statute's complexity, the vast number of [trucks and trucking companies it affects], and the consequent need for agency expertise and experience [should] lead [a court] to read the statute as delegating to the [ICC] considerable authority to fill in, through interpretation, matters of detail related to its administration." *Barnhart v. Walton, supra*, 535 U.S. at 225. If there ever was a "matter of detail" suitable to be resolved by agency decisionmaking, this is it. The ICC clearly was the appropriate body to make a choice between using the actual fee and using an announced but not yet effective fee in determining the statutory meaning of "the fee * * * collected or charged as of November 15, 1991." The Michigan Court of Appeals acted correctly in deferring to the ICC's interpretation.

II. This Court's Opinion in *Yellow Transportation IV* Supports the Michigan Court's Actions.

This Court's opinion in *Yellow Transportation IV* provides added support for the decisions of the Michigan Court of Appeals in *Yellow Freight II*, *Schneider II*, *Yellow*

Transportation V and *Schneider IV*. *Yellow Transportation IV* provides substantial guidance to lower courts on how to apply the ICC's decisions implementing ISTEA in subsequent interpretations of the ISTEA statute. In every respect, these guidelines support the analysis and outcome of *Yellow Freight II*. As the Michigan Court of Appeals noted in *Yellow Transportation V*, the conclusions reached initially in *Yellow Freight II* stand on substantially stronger ground as a result of this Court's opinion in *Yellow Transportation IV*. (Yellow Pet. App. 9a)

Yellow Transportation IV initially confirmed that the ICC decisions implementing ISTEA are entitled to full deference from subsequent reviewing courts under the principles announced in *Chevron*. *American Trucking*, the decision to which the Michigan Court of Appeals deferred in *Yellow Freight II*, is specifically referenced in *Yellow Transportation IV* as one of the ICC decisions to which deference was required. (49b) This Court noted that the ICC in promulgating standards for implementing ISTEA was acting under an express delegation of authority from Congress directing the ICC to promulgate standards for implementing the new Single State Registration System. 49 U.S.C. §11506(c)(1) (48b). The Court stated that express Congressional authorization to issue regulations or set standards is a "very good indicator of delegation meriting *Chevron* treatment." *Id.*, citing *United States v. Mead Corp., supra*, at 533 U.S. 218, 229. Under *Yellow Transportation IV*, courts seeking to interpret ISTEA are required to defer to the ICC's construction of the ISTEA statute as long as the ICC interpretation is reasonable. (50b)

Yellow Transportation IV also sets standards for determining the degree of required *Chevron* deference that are in complete accord with the standards followed by the

Michigan Court of Appeals in its *Yellow Freight II* opinion. *Yellow Freight II* found very clearly that the ISTEA statute was silent on the question of how the phrase "collected or charged as of November 15, 1991" should be applied to a situation in which a state was charging one fee for operations on that date but had announced and begun advance collection on that date of a different fee applying to the following year. The *Yellow Freight II* opinion stated specifically that

> We do not believe Congress had an intention on the precise question at issue. * * * Because the statute does not reveal Congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. (28b) (Citations omitted)

This very same lack of Congressional intent was found in the portion of ISTEA analyzed in *Yellow Transportation IV*. This Court noted specifically that courts are required to defer to the action of agencies such as the ICC "to resolve any ambiguities and fill in any holes in the statutory scheme." (51b) The Court specifically referenced its opinion in *Barnhart v. Walton, supra*, at 535 U.S. 212. (49b) The referenced text of *Barnhart* states that the fact that a "particular statutory provision says nothing explicitly about [a particular subject] * * * normally creates ambiguity. It does not resolve it." *Id.* at 535 U.S. 218. The opinion in *Yellow Freight II* thus was in complete conformity with the subsequently announced standards of this Court as to how courts are required to apply ICC interpretations of the ISTEA statute in light of Congressional silence on that statute's proper interpretation.

While *Yellow Transportation IV* did not specifically consider whether 1992 fees paid in advance before November 15, 1991 should be considered fees "collected or

charged as of November 15, 1991," statements of the Court at numerous points indicate that such a construction of the statute is not supportable. For example, *Yellow Transportation IV* describes the ICC's overall policy as "requir[ing] States to preserve fees at the level they actually collected or charged pursuant to reciprocity agreements *in place* as of November 15, 1991." (52b) (emphasis added) As noted previously, it is beyond dispute in this case that the reciprocity agreement "in place" as of November 15, 1991 was the 1991 agreement allowing Illinois-based vehicles to operate on Michigan highways on that date without payment of any bingo stamp fees. *Yellow Transportation IV* moreover stated specifically that "under the ICC's rule, where a state waives its registration fee, its 'fee * * * collected or charged' is zero and must remain zero." (50b) This is the precise language referenced by the ICC in *American Trucking* and cited in *Yellow Freight II* to describe Yellow's position that it was paying a state "zero fees" covering 1991 operations. *American Trucking* at 14b; *Yellow Freight II* at 26b

Yellow Transportation IV lastly provides added support for the concept recognized in *Yellow Freight II* that an important goal of ISTEA was to not allow registration fees to rise above the November 15, 1991, levels frozen by Congress. *Yellow Transportation IV* specifically confirms the ICC's discretion to shape its regulations and policies under ISTEA around the fee freeze concept. *Yellow Transportation IV* at 50b, 51b The fee freeze determinations by the ICC in *American Trucking* cited by this Court in *Yellow Transportation IV* occur within three paragraphs of the ICC's resolution of the fee date interpretation issue based on the same concepts. Compare, *American Trucking* at 17b, 18b Deference to *American Trucking* as required by

Yellow Freight II and confirmed in *Schneider II*, *Yellow Transportation V* and *Schneider IV* is thus entirely in accord with the opinion of this Court in *Yellow Transportation IV*.

CONCLUSION

The petitions for writ of certiorari should be denied.

Respectfully submitted,

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[Instructions, Interstate Cab Card Stamp Application for 1991 Operating Year (Exhibit F, Affidavit of Thomas R. Lonergan; November 21, 1996; *Schneider I*)]

Instructions:

1. **New applicant and ICC sub registrations** – For a new application or an ICC sub registration you must file Form A in duplicate. The filing fee for a new application is $25. The filing fee for a sub is $10. Exempt applications must file Form A-1 in duplicate.

2. **Cab Cards** – ICC regulated carriers, place the identification stamp on Form D, Uniform Identification Cab Card, available from NARUC, P.O. Box 684, Washington DC 20044. Exempt carriers may place the identification stamp on Form D-1, Uniform Identification Cab Card, available from NARUC.

3. **Expiration** – Cab card stamps are issued effective February 1 of the year for which they are issued and expire on January 31 in the succeeding calendar year.

4. **Cab card stamp fees** – The cab card stamp fees will vary depending upon the state in which the carrier's vehicles are commercially registered. Please refer to the accompanying chart to determine the fees appropriate to your fleet. Enter the number of vehicles and the fees for each state in the blanks provided in item 8, and calculate the total fees due. If vehicles in your fleet are commercially registered in a state or province which does not require the payment of a cab card stamp fee, you should still complete the form and order the appropriate number of cab card stamps. Where additional space is required, a plain sheet of paper may be labeled 'Appendix' and is the response continued by noting the item number being continued.

5. **Insurance** – The State of Michigan **does not** require interstate or exempt carriers to file a current insurance certificate.

6. **Return mailing address** – If stamps are to be mailed to an address other than listed on line 4 of this application, please furnish a self-addressed envelope.

7. **Payment of fees** – Make your check or money order payable to the **State of Michigan**. Funds must be in U.S. dollars. Payment of fees to accompany this application.

8. **Mailing Address –**

   MICHIGAN DEPARTMENT OF COMMERCE
   PUBLIC SERVICE COMMISSION
   6545 MERCANTILE WAY
   P.O. BOX 30221
   LANSING, MICHIGAN 48909-7504

9. Stamp orders are returned with another Interstate Cab Card Stamp Application for possible use during the time period to add additional vehicles to your fleet. Do not use that application for the following year because the stamp fees are subject to change annually. Stamp purchasers will automatically be mailed next years application sufficiently in advance of the due date.

10. **Questions – Please call (517) 334-6389**

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9 I.C.C.2d 1184
Fed. Carr. Cas. ¶38,096
Interstate Commerce Commission (I.C.C.)

AMERICAN TRUCKING ASSOCIATIONS – PETITION FOR DECLARATORY ORDER – SINGLE STATE INSURANCE REGISTRATION NO. 41086

Decided November 18, 1993

Effective on November 22, 1993

The Commission finds that the Commonwealth of Kentucky is not eligible participate in the Single State Registration System and reaffirms and clarifies findings that States must observe reciprocity agreements when determining applicable per vehicle registration fees.

BY THE COMMISSION:

In a decision served May 18, 1993, in Single State Insurance Registration, 9 I.C.C.2d 610 (1993) (Single State), the Commission adopted regulations replacing the multi-State motor vehicle registration system, known as the "bingo card" program, with a simplified, base-State insurance registration system. The Commission acted in accordance with the mandate of §4005 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law No. 102-240 (ISTEA), which substantially amended 49 U.S.C. §11506 – Registration of Motor Carriers by a State. Under the new law and implementing regulations, carriers must (1) file proof of insurance with a single participating registration State, (2) pay fees to that State to be allocated among all participating States in which the carrier operates, and (3) keep in each of their vehicles a copy of a receipt issued by their registration State. The

Commission's new regulations are codified at 49 C.F.R. Part 1023. The "bingo" regulations previously were codified at that Part.

As pertinent here, §11506(c)(2)(D) provides that:

> Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under [predecessor Part 1023] shall be eligible to participate as a registration State * * * or to receive any fee revenue under [the new statutory provisions].

Also as pertinent, §11506(c)(2)(B)(iv) indicates that the fee system established under the amended standards "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The statute advises, at §11506(c)(2)(C), that "the charging or collection of any fee * * * that is not in accordance with the fee system established under [the pertinent provisions of the new law] shall be deemed to be a burden on interstate commerce." The Commission's new regulations mirror these statutory requirements at 49 C.F.R. §1023.2(a), 49 C.F.R. §1023.4(c)(4), and 49 C.F.R §1023.4(g), respectively.

On August 27, 1993, the American Trucking Associations (ATA) filed a petition requesting the Commission to determine that certain State actions are inconsistent with the above-cited statutory and regulatory requirements. Specifically, ATA alleges, first, that Kentucky has commenced participating in the new registration program even though, in view of facts alleged and interpreted by ATA, Kentucky is not eligible to participate. ATA alleges, second, that Texas is ignoring the requirement that fees be frozen as of November 15, 1991, and is charging all

carriers an across-the-board fee of $10. In this regard, ATA points to the Commission's determination that States must continue to observe reciprocity agreements that had the effect of reducing carriers' fees. See *Single State, supra*, 9 I.C.C.2d 617-619. As a third point, ATA contends that several participating States in addition to Texas are attempting to modify or disregard their reciprocity agreements and to raise fees beyond the levels that they charged based on their reciprocity agreements under the previous registration system.

In response to the petition, in a notice served September 16, 1993, and published at 58 Fed.Reg. 48,673 (1993), the Commission instituted a declaratory order proceeding and solicited public comment on the issues ATA raised. Twenty comments were received; the commenters are identified in the Appendix. In addition to the ATA, six motor carrier interests, the National Association of Regulatory Utility Commissioners (NARUC), the National Conference of State Transportation Specialists (NCSTS), and nine individual States commented. The United States Department of Transportation (DOT) and a single consultant also commented.

THE COMMENTS

Participation by Kentucky.

Regarding the eligibility issue, Kentucky contends that it did participate in the old registration system and therefore is eligible to participate in the new system.[1]

[1] In referring to each participating State regulatory agency, we will simply use the State name.

Kentucky has been using multi-purpose vehicle identification cards, not the Form D "bingo cards" described in Subpart D of the old "bingo" regulations. A carrier operating in Kentucky has been required to carry the Kentucky card in each of its power units (in addition to the "bingo" card it carried if it operated in States participating in the "bingo" system). Kentucky indicates that its vehicle identification cards contain the vehicle identification number Kentucky was permitted to assign under the "bingo" regulations, the pertinent ICC authority number, and other identifying information relating to each power unit, thus providing an efficient mechanism for evidencing payment of appropriate roadway use and fuel taxes and compliance with licensing requirements, including the holding of appropriate intrastate operating authority. Kentucky indicates that its program uses the same vehicle identification renewal period as that used in the "bingo" program, allows for cab card re-entitlement, requires the submission of ICC authority, and allows the use of Form A for filing such authority (as under Subpart B of the old regulations). It indicates also that its program establishes the requirement of naming an agent for service of process (as under Subpart C of the old regulations) and maintains a uniform procedure for evidencing mandatory insurance that uses the "bingo" system Form E (as under Subpart E of the old regulations). Kentucky historically has charged a $25 application fee for filing evidence of ICC authority and a $10 annual per power unit fee.

NARUC supports Kentucky position that it is eligible to participate. NARUC emphasizes that Kentucky system has used elements of the old "bingo" program. In NARUC's view, Kentucky system was developed for the convenience of the interstate motor carriers, and it would be unfair to

penalize the State for some minor nonconformities made to accommodate the trucking industry. Further, NARUC argues, denying Kentucky the right to participate would force in-State carriers to register elsewhere, thereby burdening both carriers and other participating States.

The ATA and the American Movers Conference (AMC), opposing the Kentucky position, emphasize that carriers have been required to purchase "bingo" cards from NARUC to use in other participating States but, at the same time, have been required to purchase the Kentucky card from Kentucky for use only in that State. Distribution Services, Inc., emphasizes that Kentucky never has required a stamp for a "bingo" card. Gray Motor Line, Inc., asserts that there is no question that Kentucky does not meet the statutory criteria for participation, and Petroleum Transport Company, Inc., asserts that it would be unfair for Kentucky to start assessing fees when it never issued a "bingo" stamp. Yellow Corporation (Yellow) believes that Kentucky intends to continue its State card and participate in the new system and to collect a $10 per vehicle fee under that system. Yellow believes, then, that it would be required to pay $10 more per vehicle to operate in Kentucky than it did in 1991.

The commenting carriers are not unanimous in their opposition to Kentucky's position. The Kentucky Motor Transport Association (KMTA) asserts that, although Kentucky might not be in compliance with the law, the association wants Kentucky-based motor carriers to be afforded the convenience of registering in their home State. In KMTA's view, should Kentucky not be permitted to participate in the new system, Kentucky-based carriers would be subjected to a penalty through no fault of their own.

Both DOT and motor carrier consultant Joy B. Fitzgerald opine that Kentucky did not participate in the "bingo" system.

Compliance by Texas.

Regarding the matter of Texas' compliance with ISTEA and Single State, Texas points out that in our January 22, 1993, Notice of Proposed Rulemaking in the Single State proceeding at 58 Fed.Reg. 5,951 (1993), the Commission initially found "no good reason for our involvement" in reciprocity agreements between States. The Commission therefore initially concluded that States need not consider the amount charged under reciprocity agreements when determining their fees as of November 15, 1991.[2]

Accordingly, at the next regular session of the Texas legislature, at the request of the Texas regulatory agency, the legislature repealed the Texas reciprocity provisions of the State law. As of September 1, 1993, Texas no longer had any authorization to charge out-of-State motor carriers reduced vehicle registration fees based on reciprocity. However, as the legislation was nearing final passage, on May 18, 1993, the Commission served the final Single State decision. In that decision, we reversed our initial conclusion and found that States must take into consideration their reciprocity agreements in effect on November 15, 1991. In view of the turn of events, Texas has found

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[2] Texas indicates that, in past years, it has charged carriers $100 per insurance filing, a $25 application fee, a $1 cab card fee, and a $10 per vehicle registration fee. Under reciprocity provisions of Texas State law, some motor carriers were entitled to a reduced vehicle registration fee.

itself in the position of having to comply both with its own State law and the Commission's conflicting final regulations.[3]

Texas emphasizes that, contrary to ATA's assertions, as of the date of its pleading (September 30, 1993), Texas has not assessed or collected any fees or even adopted any fee schedule under the new system. Rather, Texas has been examining its administrative options. It has cooperated with Illinois in the preparation of a fee matrix. However, it has not taken any final action. It does not believe that it has acted in any manner that either conflicts with the Commission's new rules or gives rise to a controversy requiring Commission action.

Actions by States.

ATA explains that States entered into two basic types of reciprocity agreements under the "bingo" program. The first was based on a carrier's principal place of business. Under such an agreement, State A would assess a lower stamp fee for vehicles operated by a carrier whose principal place of business was in State B. and State B would reciprocate with respect to carriers having a principal place of business in State A. The second type of reciprocity agreement was based on the State of a vehicle's license plate registration. Under such an agreement, State C would assess a lower stamp fee for a carrier having vehicles "plated" in State D, regardless of where the carrier's

[3] Texas notes that, partially as a result of the Commission's ruling regarding reciprocity agreements, States have appealed the final rules, and court action is pending. See NARUC v. ICC, No. 93-1362 (D.C.Cir. filed May 27, 1993). See also, AIA v. ICC, No. 93-1450 (D.C.Cir. filed July 16, 1993).

principal place of business was located. State D would reciprocate for vehicles "plated" in State C.

ATA indicates that many States are using a fee matrix developed by Illinois that purportedly gives effect to the various States' reciprocity agreements. However, ATA argues, the Illinois fee matrix recognizes only those reciprocity agreements that were based on a carrier's principal place of business. ATA argues that neither the matrix nor the individual States acknowledge agreements and fees that were determined by State of vehicle registration. As a result, it argues, many carriers face sharply increased fees. ATA recommends that the Commission require participating States to allow carriers to submit to their base registration States evidence as to the fees they paid to participating States for 1991.

Yellow notes that reciprocity agreements have been based not only on principal place of business and vehicle registration State, but also on the type of operating authority held. Yellow echoes ATA's assertion that the States, in developing the matrix of fees to be used under the new system, have assumed that all reciprocity agreements were based on principal place of business. Yellow contends that this assumption will result in a revenue windfall for the States and impose an economic burden on the motor carrier industry. Yellow contends that some States, citing administrative difficulty and confusion, are applying pressure on "base plate agreement" States to convert their agreements to a principal-place-of-business basis. Yellow gives some examples of the harm it might suffer if agreements were modified.

Yellow proposes that motor carriers be allowed to provide to their registration States documentation

supporting the facts that they paid reduced fees for 1991 and that they continue to qualify for fee reductions. It suggests that States provide each other lists of States with whom they have agreements and the appropriate fees. States would then have the knowledge of the fee levels, but the carriers would have the burden of requesting and supporting reduced fees.

NARUC and the NCSTS argue that, originally, reciprocity agreements were based on the principal place of business or domicile State of the carrier. They assert that, contrary to ATA's statements, the agreements were not drafted or entered into in contemplation of where the carrier's vehicles were licensed or base-plated. Base-plating, which, they assert, began in the early 1960's under the International Registration Plan (IRP), was unknown when the States entered into their reciprocity agreements. (Commenters do not explain how reciprocity agreements relating to fees paid under the "bingo" system could pre-date the beginning of the program in the mid 1960's.) NARUC and the NCSTS go on to argue that, through the years, regulatory oversight in many States has been transferred from agency to agency, institutional memory has been diminished, and the intent and requirements of the reciprocity agreements have been lost, misinterpreted, or reinterpreted to further accommodate carriers. Some States, commenters assert, have lost or misplaced copies of their written agreements. Other States, they assert, assume that agreements were canceled and unilaterally began charging non-reciprocal fees to carriers without notifying the reciprocal State(s).

NARUC and the NCSTS dispute the ATA's allegation that States are eliminating some of their reciprocity agreements, favoring those based on principal place of

business over those based on base-plate States. They assert that, in actuality, States are reexamining their agreements and, as a result, are clarifying them. Consequently, some States are changing their fees and fee structures to conform to the letter of their agreements. Discrepancies are being found and corrected so that the agreements truly will confer reciprocal benefits once again. NARUC and NCSTS aver that States are removing inequities that resulted in some carriers paying more and others paying less than what they should have paid. They add that the statutory language concerning the freeze on fees was not intended to prohibit or enjoin States from correctly interpreting and enforcing previously entered into reciprocity agreements. Commenters contend that the KD) position would require States purposefully to misinterpret and misapply provisions of many reciprocal agreements.

NARUC and the NCSTS complain that some carriers manipulated the old registration system by claiming several different principal places of business. They believe that the States should be permitted to find the discrepancies in order to stop carriers from wrongfully securing benefits of reciprocity agreements. If the Commission allows carriers to submit to States evidence of past fees paid, they argue, it also should allow States to require carriers to disclose certain information, including principal places of business used.

The NCSTS adds that another problem with interpreting reciprocity agreements to apply to base-plate States is that, under the IRP, carriers can register different fleets in different States. It argues that, to give effect to the carriers' base-plate States would force the States to solicit additional information, would make fee collection

cumbersome, and would render the registration process vehicle-specific, contrary to law. The NCSTS also points out that the Illinois software package being used by a majority of States calculates fees based on principal place of business and cannot make distinctions in fees based on where a vehicle is licensed. Illinois argues that there is nothing in either the old or the new statute evidencing any intent of Congress to affect the right and practice of States to negotiate, enter into, modify, or rescind agreements granting reciprocal relief from registration fees.

Like NARUC and the NCSTS, Illinois contends that there have been and now are carriers that benefit from reciprocity agreements under which they do not qualify. Carriers that had been charged improper amounts under the agreements, it asserts, are not entitled to continue to pay those improper amounts. Illinois complains that a declaration that it is unlawful for a State to attempt to charge a fee different from the fee charged under the "bingo" system begs the question of whether a carrier was in fact even covered by an existing reciprocity agreement. Illinois concludes that, in view of the Commission's statements that the new system is designed to function without Commission supervision, this issue is inappropriate for a declaratory order proceeding.

Kansas contends that the Commission lacks jurisdiction over reciprocity agreements between two States and between a State and a motor carrier. Regarding the suggestion that carriers be permitted to submit evidence of fees paid, Kansas avers that it will accept evidence regarding fees only from participating States, not from carriers. Similarly, Texas queries how the Commission can determine the validity of an agreement made between two States based on State law. Texas indicates that it has

encountered problems verifying its reciprocity agreements with other States. It asserts that 10 of the 23 States it considered as having had reciprocity agreements with it have stated that they do not. Texas asserts that, if conditions for reciprocity did not exist, then the fees of less than $10 that Texas charged and collected were illegal under State law. It queries whether States must continue to charge "illegal fees." It complains that the Commission's ruling on reciprocity has turned the program into an administrative nightmare. DOT asserts that, if the fee charged on November 15, 1991, was one set under a reciprocity agreement, it seems clear that such fee constitutes the highest fee chargeable. The relevance of the fee charged on November 15, 1991, DOT asserts, may not be evaded by the artifice of canceling or modifying the relevant agreement. Raising fees to carriers that previously benefitted from reciprocity agreements, DOT contends, is contrary to the letter and spirit of the law.

Other matters.

Yellow raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane.

DISCUSSION AND CONCLUSIONS

Participation by Kentucky. We conclude that Kentucky is not eligible to participate in the Single State Registration System. The statute is clear that only States which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under the predecessor registration system at 49 C.F.R. Part 1023 are eligible to participate. See 49 U.S.C. §11506(c)(2)(D). While the Kentucky program embraced some features of the "bingo" regulations at predecessor Part 1023, the program did not include any features of Subpart D – Registration and Identification of Vehicles and Driveaway Operations, embracing prior ss 1023.31 through 1023.42, the heart of the "bingo" system. It was Subpart D that detailed the manner in which carriers would apply for a stamp or number, pay appropriate fees therefor, and display proof of having paid and thus registered. Significantly, while every participating State required carriers to use the Form D "bingo" card described in Subpart D, Kentucky did not. As of January 1, 1991, if a Kentucky enforcement officer were to ask a driver to present a cab card evidencing vehicle registration, and the driver presented only a "bingo" card, the carrier would have been subject to a fine.

The position Kentucky and NARUC would have us adopt would require us to conclude that operation of a registration system that embraced some or many of Part 1023's requirements or that functioned under a color of right conferred by Part 1023 would suffice to merit a finding of eligibility. We cannot adopt a position that conflicts with the plain language of the law. Kentucky simply did not participate in the "bingo" program. Rather, Kentucky maintained its own private vehicle identification, taxation, and registration system and collected

additional fees apparently under color of right claimed under predecessor s 11506 and the "bingo" regulations adopted thereunder. We note that neither the NCSTS nor any State has come forward to argue that Kentucky did, in fact, participate in the "bingo" program. We are sympathetic to the arguments that Kentucky system was administratively efficient for the State and convenient for carriers, but the law does not give us the latitude to weigh such factors in the balance. In any event, Kentucky carriers that, under the "bingo" program, were required to register with many States will reap the benefits of greatly simplified registration under the new law.

Compliance by Texas. ATA has alleged that Texas is ignoring the statutory requirement (at 49 U.S.C §11506(c)(2)(B)(iv)) that fees be frozen as of November 15, 1991, has disavowed its reciprocity agreements, and is charging carriers an across-the-board fee of $10. In view of Texas' explanation of the matter, and of the record in its entirety, we do not believe that good cause exists for further considering Texas' action as an independent matter. Texas is among the States embroiled in the controversy of how to implement their reciprocity agreements under the new registration system. Accordingly, we believe it best to proceed by considering the States' actions and positions collectively.

Actions by States. ATA alleges that participating States are attempting to modify or disregard their reciprocity agreements and to raise fees beyond the levels that they charged based on their reciprocity agreements under the previous registration system. As seen, 49 U.S.C. §11506(c)(2)(B)(iv) requires that fees be frozen as of November 15, 1991. In our decision promulgating the new regulations required by ISTEA, we concluded that the

letter of the law mandated that States observe their reciprocity agreements when determining the fees they charged as of that date. *Single State*, 9 I.C.C.2d at 617-619. In reaching our conclusion, we recognized that the variety of reciprocity agreements might make collection of a range of fees cumbersome for some registration States. *Id.*, at 618.

We reaffirm our prior conclusion. The language of the statute is clear. States may not "clarify" their agreements, "correct discrepancies" in them, or "remove inequities" from them if the result is that fees frozen as of November 15, 1991 will change. NARUC and the NCSTS contend that the statutory language concerning the fee freeze was not intended to prohibit or enjoin States from correctly interpreting and enforcing agreements they previously had entered into with each other. Illinois contends that there is nothing in either the old or the new statute evidencing any intent of Congress to affect the right and practice of States to negotiate, enter into, modify, or rescind agreements granting reciprocal relief from registration fees. These contentions find no support in the unambiguous language of the statute or in its legislative history. Congress mandated a fee freeze; it did not qualify its mandate. Had Congress intended that States be permitted to revise fee schedules to account for errors in calculation or other mistakes, it could have so specified, but it did not.

It follows that States may not use a mechanism, such as the Illinois matrix, that requires or results in the wholesale disavowal of all or part of any type of reciprocity agreement on which a fee was charged or collected as of November 15, 1991, whether the agreement is based on the carrier's principal place of business, the State of a

vehicle's license plate of registration (so- called base-plate registration), or on the type of operating authority held (as alleged by Yellow). We will not, as ATA would have us do, find that States are violating the law and our regulations. It is not clear, nor can it be in this proceeding, precisely what action each participating State is taking. We find simply that it is inconsistent with the statute for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system. We understand that determining the statutorily mandated fees and devising a system for collecting and disbursing them is a difficult task. We will not presume to offer solutions here. Neither will we endorse solutions such as those proposed by ATA and Yellow, as described above. We expect that motor carrier and State interests will continue to work together to arrive at practicable, equitable solutions. We expect, also, that States will delay enforcement until after all carriers have had sufficient time to register their vehicles, and distribute registration receipts, under the program as ultimately implemented. In all matters relating to implementation of the new registration program, we will continue to offer our informal assistance. Our staff is available to help the States and the carriers resolve any lingering problems.

Other matters. Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

VICE CHAIRMAN SIMMONS, joined by CHAIRMAN McDONALD, dissenting in part:

I disagree with the majority's overly strict interpretation of ISTEA which precludes the state of Kentucky from participating in the Single State Registration System. In my opinion, Kentucky's previous registration program encompassed a sufficient number of the requirements of Part 1023 to make it eligible for the new program. The Commission's latitude in interpreting the laws it is charged to administer, often found in the past to be quite broad, has in this instance been found to be very narrow. Thus, I believe we may weigh factors in addition to strict statutory interpretation to decide this issue. Among such factors are the lack of any substantial opposition to, and, the support of KMTA and NARUC for Kentucky's participation. Also, denying Kentucky the right to participate will force instate carriers to register out-of-state, thus burdening both the carriers and the registration states.

We find:

1. The Commonwealth of Kentucky is not eligible to participate in the Single State Registration System.

2. It is inconsistent with the statute for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system.

3. This decision will not significantly affect either the quality of the human environment of the conversation of energy resources.

It is ordered:

1. The petition for declaratory order is granted to the extent discussed above.

2. This proceeding is discontinued.

3. This decision is effective on November 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman Simmons, joined by Chairman McDonald, dissented in part with a separate expression.

APPENDIX

LIST OF COMMENTERS

Motor Carrier Interests

American Movers Conference
American Trucking Associations
Distribution Services, Inc.
Gray Motor Line, Inc.
Kentucky Motor Transport Association
Petroleum Transport Company, Inc.
Yellow Corporation

State Interests

National Association of Regulatory Utility Commissioners
National Conference of State Transportation Specialists
Illinois Commerce Commission
Iowa Department of Transportation
Kansas Corporation Commission
Kentucky Transportation Cabinet
Maine Secretary of State, Bureau of Motor Vehicles
Missouri Division of Transportation

New Mexico State Corporation Commission
Railroad Commission of Texas
Wisconsin Department of Transportation

Federal Government

United States Department of Transportation

Other Commenters

Joy B. Fitzgerald, Inc.

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231 Mich. App. 194, 585 N.W.2d 762,
Fed. Carr. Cas. ¶84,070

Michigan Court of Appeals

YELLOW FREIGHT SYSTEM INC., Plaintiff-Appellee,

v.

STATE OF MICHIGAN, Department of Treasury, State Treasurer, Department of Commerce, Director of Department of Commerce, Michigan Public Service Commission and Michigan Public Service Commissioners, Defendants-Appellants.

YELLOW FREIGHT SYSTEM INC., Plaintiff-Appellant,

v.

STATE OF MICHIGAN, Department of Treasury, State Treasurer, Department of Commerce, Director of Department of Commerce, Michigan Public Service Commission and Michigan Public Service Commissioners, Defendants-Appellees.

Docket Nos. 194703, 195564.
Submitted April 14, 1998, at Lansing.
Decided Aug. 14, 1998, at 9:15 a.m.
Released for Publication Nov. 2, 1998.

Interstate commercial carrier brought action alleging state had collected registration fees in excess of amount allowed by federal law under single-state registration system (SSRS). The Court of Claims, William E. Collette, J., granted carrier's motion for summary judgment, awarding partial refund plus interest, but denied its motion for attorney fees. State appealed refund and carrier appealed denial of attorney fees. On consolidated appeals, the Court of Appeals, McDonald, J., held that: (1) state was precluded from collecting registration fees from carrier in excess of amount charged or collected for statutorily-designated registration year; (2) governmental immunity statute did not apply to carrier's action; (3) refund to

carrier was appropriate remedy; and (4) carrier was not entitled to recover attorney fees.

Affirmed.

O'Connell, J., filed an opinion concurring in part and dissenting in part.

Eames Wilcox by Ronald J. Mastej and John W. Bryant, Detroit, for Plaintiff-Appellee.

Frank J. Kelley, Atty. Gen., Thomas L. Casey, Sol. Gen., and Don L. Keskey and Judith I. Blinn, Asst. Attys. Gen., for Defendants-Appellants.

Before RICHARD ALLEN GRIFFIN, P.J., and McDONALD and O'CONNELL, JJ.

McDONALD, Judge.

Plaintiff, an interstate commercial carrier, brought this action asserting that defendants (the state) had collected registration fees pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4) in excess of the amount allowed by federal law, specifically the single-state registration system (SSRS). The Court of Claims, ruling on cross motions for summary disposition, agreed with plaintiff and granted its motion. The court entered judgment in favor of plaintiff for $99,580 plus interest and ordered that the state was barred from further collection of the registration fees until 49 U.S.C. "11506(c) (B)(iv) [sic] is rescinded." In Docket No. 194703, the state appeals this ruling as of right. In Docket No. 195564, plaintiff challenges the Court of Claims' denial of plaintiff's request for attorney fees. We affirm.

I

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA), P.L. 102-240, which substantially amended 49 U.S.C. § 11506[1] and directed the Interstate Commerce Commission (ICC) to reform the licensing and registration system existing in the states. The statute mandated the creation of a new system, the SSRS. The statute required the ICC to prescribe amendments of the previously existing standards and set forth certain requirements for the new standards.[2]

The provision at issue, 49 U.S.C. § 11506(c)(2)(B)(iv)(III), stated that the amended standards shall establish a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991."

The regulations promulgated by the ICC repeated the phrase "collected or charged as of November 15, 1991" without further explanation. See 49 C.F.R. § 1023.4(c)(4)(ii) (1995), later redesignated as 49 C.F.R. § 367.4(c)(4)(ii) (1996).

Because the statute essentially froze the fees a state could collect at the level existing as of November 15, 1991, the fee system in effect in this state at that time is pertinent to understanding the issues raised in this case. For

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[1] 49 U.S.C. § 11506 was amended and recodified and now appears at 49 U.S.C. § 14504. To avoid confusion, we will refer only to 49 U.S.C. § 11506.

[2] The registration system in effect before and after the ISTEA is explained in detail in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC*, 309 U.S. App. D.C. 325, 41 F.3d 721 (1994).

the 1991 and 1992 registration years, the state collected fees by requiring interstate carriers to buy cab card stamps, also known as "bingo stamps," for each of the carrier's vehicles operating within the state. Each stamp cost $10. Pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4), the state had reciprocity agreements with certain other states so that each would waive the fees for vehicles from the other. The dispute arises in part because the state changed the method it used for determining reciprocity. For 1991, the state used the "base-plating system," which means that reciprocity was determined by the state of the vehicle's registration. In early 1991, the Public Service Commission (PSC) decided that it would quit using the base-plating system. Instead, for the 1992 registration year, fees and reciprocity were determined by the carrier's principal place of business. The revised renewal applications were mailed to all interstate motor carriers in September 1991. Importantly, the 1992 fees to be "collected or charged" by the state were based on a calendar year and therefore were not due and owing until January 1, 1992.

The change in the method of determining reciprocity resulted in a substantial increase in the fees plaintiff owed the state for the 1992 registration year. Under the base-plating system used for 1991, plaintiff paid the state $50 for five vehicles that were "base-plated" in Oklahoma, but paid nothing for 3,730 vehicles "base-plated" in Illinois and Indiana, because those states did not charge fees for vehicles based in Michigan. However, plaintiff's principal place of business is Kansas, which had no fee waiver agreement with Michigan. Therefore, for 1992, plaintiff paid $10 a vehicle, a total of $37,850 under the new system. Plaintiff sent, and the state received, the fees for

1992 before November 15, 1991. Plaintiff voluntarily paid its 1992 fees early in order to prevent any disruption of its trucking activities at the commencement of the January 1, 1992, calendar year.

II

The state argues the Court of Claims erred in determining that the state could not charge plaintiff $10 a vehicle. According to the state, it had "charged or collected" $10 a vehicle as of November 15, 1991. Plaintiff argued, and the Court of Claims agreed, the statute was properly interpreted to refer to the fees charged or collected for the 1991 registration year. We affirm the Court of Claims' decision with regard to this issue.

The Court of Claims' opinion indicates its decision was based on the ICC's decision in *American Trucking Ass'n Ins – Petition for Declaratory Order – Single State Ins Registration,* 9 ICC2d 1184 (1993). In *American Trucking,* the ICC discussed various issues that had arisen under the SSRS. The plaintiff sought clarification from the ICC concerning the statutory language. The ICC summarized the issue raised by the plaintiff in the following way:

> Yellow [Freight] raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to

> November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane.
>
> The ICC resolved the matter as follows:
>
> Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

The state argues the court should not have followed *American Trucking* because it does not comport with the unambiguous language of the statute and renders the November 15, 1991, deadline a "nullity." Therefore, the state argues the decision was not entitled to the deference usually afforded an agency's interpretation of a statute that the agency is charged with enforcing.

This Court has recognized that deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v. General Motors Corp.,* 134 Mich. App. 429, 432, 351 N.W.2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker v. Johnson & Johnson Vision Products, Inc.,* 217 Mich. App. 705, 713, 552 N.W.2d 679 (1996), citing *Chevron USA, Inc. v. Natural Resources Defense Council,*

Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15, 1991" denotes a period that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in any year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue. . . ." *Id.* at 843, n. 9, 104 S.Ct. 2778. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker, supra.*

We conclude that the agency's interpretation of the statute was reasonable. In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991.

Plaintiff's voluntary payment of fees not due and owing does not affect our analysis.

The state also contends the Court of Claims' ruling applying the *American Trucking* decision by the ICC "effectively repeals existing reciprocity agreements and/or alters them to reinstate a previous basis for determining

fee waivers thereunder[,]" and thereby "contravenes the Tenth Amendment."[3] This argument has no merit. We disagree with the premise of the state's argument, i.e., that the Court of Claims' decision repeals or alters any reciprocity agreements. Any effect on a state's ability to alter its reciprocity agreements is the result of Congress' decision to freeze fees at the level as of November 15, 1991. Congress has the authority to take this action under the Commerce Clause, U.S. Const., art. I, § 8.

The state argues the language in the *American Trucking* decision by the ICC was not binding on the state because the notice of institution of declaratory action resulting in that decision did not indicate facts specific to Michigan. We disagree. The Court of Claims did not conclude that the ICC decision in *American Trucking* was binding on the state. However, the court could not properly disregard the agency's interpretation of a statute merely because the state did not participate in the proceeding. The state has not provided, nor are we aware of, any authority holding that an alleged deficiency in the notice of institution of declaratory action affects judicial review of an agency's interpretation of a statute.

The state also suggests that states should not be required to consider reciprocity agreements in determining the amount of fees "charged or collected as of November 15, 1991." In *Single-State Ins Registration,* 9 ICC2d 610 (1993), the ICC determined that states must consider the reciprocity agreements. The ICC's decision in this regard

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[3] *U.S. Const., Am. X* states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

was upheld in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC,* 309 U.S. App. D.C. 325, 41 F.3d 721 (1994). Although that decision is not binding on this Court, we find it persuasive and adopt its ruling with regard to this issue.

III

We also reject the state's argument that governmental immunity, M.C.L. § 691.1407; M.S.A. § 3.996(107), bars plaintiff's action. The wrong alleged by plaintiff does not fall within the definition of a tort. This action to recover fees paid in excess of the amount allowed by federal law is analogous to an action to recover illegal taxes. "The remedy to recover illegal taxes paid is in assumpsit for money had and received." *Service Coal Co. v. Unemployment Compensation Comm.,* 333 Mich. 526, 531, 53 N.W.2d 362 (1952), quoting *Salisbury v. Detroit,* 258 Mich. 235, 241 N.W. 888 (1932). An action in assumpsit for money had and received is not an action in tort. Therefore, governmental immunity from tort liability under M.C.L. § 691.1407; M.S.A. § 3.996(107) does not apply.

IV

The state also contends plaintiff was required to request a declaratory ruling from the PSC as a prerequisite to court review. We disagree. The state relies on both §§ 63 and 64 of the Administrative Procedures Act, M.C.L. § 24.263; M.S.A. § 3.560(163) and M.C.L. § 24.264; M.S.A. § 3.560(164). However, neither section would support reversing the judgment entered in favor of plaintiff.

Plaintiff's action is not accurately characterized as simply an action for a declaratory judgment available under § 64. Rather, as previously discussed, the action was

essentially an action in assumpsit for money had and received. Furthermore, only the validity or applicability of rules that had been formally promulgated as rules may be challenged in actions for declaratory judgments under § 64. See *Jones v. Dep't of Corrections,* 185 Mich. App. 134, 137, 460 N.W.2d 575 (1990). The state has not suggested that the collection of fees was pursuant to a rule that had been formally promulgated under the APA. Because plaintiff's action was not a challenge to the validity or applicability of a formally promulgated rule, § 64 of the APA does not require plaintiff to get a declaratory ruling as a prerequisite to judicial review.

To the extent that the state claims that plaintiff was required to get a declaratory ruling under § 63, we also find that section inapplicable. Section 63 indicates that the agency "may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency." Assuming plaintiff could have requested a declaratory ruling, § 63 does not require plaintiff to do so before seeking judicial review.

V

We next address the relief that the court awarded to plaintiff, specifically, a refund of $99,580, which is the amount collected for 1994, 1995, and 1996. Arguing that a refund is contrary to the United States Supreme Court decision in *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco,* 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990), the state requests the remedy be limited to prospective relief commencing at the time of "any final appellate decision" on the issue.

Contrary to the state's argument, we believe that *McKesson* indicates that a refund is an appropriate remedy in this case. In *McKesson,* the United States Supreme Court considered whether prospective relief was an adequate remedy for wholesale liquor distributors who sought a refund of excess taxes they had paid pursuant to Florida's excise tax scheme. The scheme was found unconstitutional because it discriminated against interstate commerce. In determining the appropriate remedy, the Court concluded that due process required more than prospective relief:

> The question before us is whether prospective relief, by itself, exhausts the requirements of federal law. The answer is no: If a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation. [*Id.* at 31, 110 S.Ct. 2238.]

The state cites *McKesson* for its discussion of the "pass-on" defense to an action for a tax refund. See *McKesson, supra* at 47-48, 110 S.Ct. 2238. The state suggests a refund is not necessary if the expense of the unlawfully collected fees was passed on to plaintiff's customers. However, the *McKesson* Court ultimately rejected the defense in that case, *id.* at 48-49, 110 S.Ct. 2238. The state has not cited any authority indicating that the pass-on defense has been adopted in this jurisdiction, and we decline to adopt it in this case.

The state also cites *LCI Int'l Telecommunications Corp. v. Dep't of Commerce,* 227 Mich. App. 196, 574 N.W.2d 710 (1997), as support for its argument that plaintiff should receive only prospective relief. In *LCI,* this Court determined that the defendants had consistently misinterpreted a statute for over twenty years, resulting in improper assessments against telecommunications carriers. The Court held that its holding should be applied only prospectively, in part because the ruling was not "clearly foreshadowed." In the present case, the result was clearly foreshadowed by the ICC's decisions in *American Trucking* and *Single-State Registration,* which were issued in 1993, less than a year after the ICC adopted the SSRS.

The state also contends that, if this Court does not limit Yellow Freight to prospective relief, it should order a remand to the PSC to allow the state to change the fee schedule to retroactively surcharge carriers who benefited from the state's misapplication of the SSRS. The state relies on language in *McKesson* suggesting that, as one of the alternatives to providing a refund to the aggrieved distributors in that case, Florida could assess and collect back taxes from the petitioners' competitors. *Id.* at 40, 110 S.Ct. 2238. However, the adequacy of any remedy necessarily depends on the basis for relief. In *McKesson,* the petitioners were entitled to relief because a statute imposing an excise tax discriminated in favor of distributors of local products. The remedies the Court approved were ways Florida could undo the discriminatory effects of the statute and make the tax scheme valid under the Commerce Clause. In the present case, plaintiff is entitled to relief because the state collected fees contrary to a statute. Because the purpose of the relief in this instance is not to undo discriminatory effects, surcharging carriers who

were allegedly undercharged is unrelated to providing plaintiff with an adequate remedy in this case. The only way to provide plaintiff with "meaningful backward-looking relief," *McKesson, supra* at 31, 110 S.Ct. 2238, to undo the misapplication of the statute is to order a refund of the amounts wrongfully collected.[4] We express no opinion whether the state may surcharge other carriers because that issue is not appropriately before us in the context of this case.

VI

In Docket No. 195564, plaintiff advances several issues relating to the court's denial of plaintiff's motion for attorney fees pursuant to 42 U.S.C. § 1988. Although the court did not explicitly rule on the merits of plaintiff's claim under 42 U.S.C. § 1983, we conclude that the denial of attorney fees was appropriate because the § 1983 claim was not viable against either the state agencies or the state officials.

Case law indicates plaintiff could not prevail in a § 1983 action against the state agencies. Section 1983 applies to "person[s]," and the United States Supreme Court has held that a state agency is not a "person" for the purposes of § 1983. *Hardges v. Dep't of Social Services,* 201 Mich. App. 24, 27, 506 N.W.2d 532 (1993), citing *Howlett v. Rose,* 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332

[4] The holding in *McKesson* is limited to situations in which a state places a taxpayer under duress to pay tax promptly when due and limits the taxpayer to challenging the tax after payment. The state does not suggest that plaintiff was given the opportunity to challenge the fees before payment and does not suggest that a distinction should be drawn in this context between the payment of fees and taxes.

(1990), and *Will v. Michigan Dep't of State Police,* 491 U.S. 58, 66, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989).

Plaintiff was not entitled to relief on the basis of its § 1983 claim brought against the state officials acting in their official capacity. Section 1983 claims seeking prospective injunctive relief may be brought against state officials acting in an official capacity. *Will, supra* at 71, n. 10, 109 S.Ct. 2304; *Hardges, supra.* However, the United States Supreme Court has held that a state court cannot grant injunctive or declaratory relief under § 1983 in state tax cases when an adequate legal remedy exists. *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm.,* 515 U.S. 582, 115 S.Ct. 2351, 132 L.Ed.2d 509 (1995).

We are not persuaded by plaintiff's attempt to distinguish *Nat'l Private Truck* on the basis that the fees in this case were collected under federal law pursuant to a system implemented by the ICC. Plaintiff contends the principles of comity and federal deference to state authorities underlying the decision in *Nat'l Private Truck* are not relevant in this case. However, federal law does not require that states charge the fees, but rather sets forth the method and limits on states that choose to collect the fees. Plaintiff's contention, "No issues of state tax law or state tax administration are here involved," is disingenuous and does not provide a meritorious basis for distinguishing *Nat'l Private Truck.*

We also disagree with plaintiff's suggestion that the Supreme Court intended its decision in *Nat'l Private Truck* to be limited to taxes and therefore not apply to fees. On the basis of the principles of comity and federalism, the Supreme Court concluded that Congress did not intend § 1983 claims to be brought in state tax cases when an

adequate state remedy is available. Those principles apply equally well when the revenue collection is in the form of a fee.

VII

The Court of Claims properly granted plaintiff's motion for summary disposition. The state was precluded from collecting fees from plaintiff in excess of the amount charged or collected for the 1991 registration year. Plaintiff is entitled to a refund of the amount improperly collected. We also affirm the Court of Claims' denial of plaintiff's motion for attorney fees pursuant to § 1988 because plaintiff had no viable § 1983 claim against any of the defendants.

Affirmed.

RICHARD ALLEN GRIFFIN, P.J., concurred.

CONCURRING/DISSENTING OPINION

O'CONNELL, Judge (concurring in part and dissenting in part.)

I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute and accordingly would instruct the Court of Claims to apply the statutory language according to its plain meaning and not according to the ICC's strained construction.

The primary goal of statutory interpretation is to ascertain and give effect to legislative purpose. *Haworth, Inc. v. Wickes Mfg. Co.*, 210 Mich. App. 222, 227, 532 N.W.2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry*

Brokers, Inc. v. City of Warren, 210 Mich. App. 304, 307, 532 N.W.2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v. Thrasher,* 196 Mich.App. 320, 323, 493 N.W.2d 457 (1992), aff'd. 446 Mich. 61, 521 N.W.2d 214 (1994).

The pertinent language in 49 U.S.C. § 11506(c)(2)(B)(iv)(III) provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include "November 15, 1991." This distortion of the plain wording of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v. General Motors Corp.,* 448 Mich. 147, 160, 528 N.W.2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher, supra.*

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To

determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc. v. Governor,* 217 Mich. App. 439, 457, 553 N.W.2d 7 (1996). Accordingly, I would read "fee . . . that such State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state (for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected or charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 U.S.C. § 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

At stake here is the state's interest in collecting higher fees from plaintiff in accordance with recent changes in the state's regulatory scheme, and plaintiff's

interest in avoiding those fee increases and continuing to operate under the old scheme. Each party argues that the other stands to receive a windfall if the other's interpretation of the statutory language at issue is adopted. That statutes have the effect, intentionally or not, of benefiting some and burdening others is not a matter of dispute, and the Intermodal Surface Transportation Efficiency Act is no exception. Under any interpretation of 49 U.S.C. § 11506(c)(2)(B)(iv)(III), someone will win and someone will lose. Although the state's reading of the statute to cause plaintiff to have to continue to pay much higher fees simply because plaintiff chose to pay 1992 fees before November 15, 1991, may seem a harsh result, the result is equally harsh if the state is obliged to forgo receiving the higher revenues to which its own laws entitle it simply because the federal statute articulated a date of late 1991 instead of early 1992. For these reasons, I would avoid any concern for who benefits, or who gets burdened, from 49 U.S.C. § 11506(c)(2)(B)(iv)(III) and simply give effect to its plain language.

Although I express no disagreement with the reasoning of part V of the majority opinion, I do not join in that part because it concerns the relief to which plaintiff is entitled, where under my reading of the statute in question plaintiff is not entitled to any relief. I concur with parts III, IV, and VI.

Supreme Court of the United States
YELLOW TRANSPORTATION, INC., Petitioner,
v.
MICHIGAN, et al.
No. 01-270.
Argued Oct. 7, 2002.
Decided Nov. 5, 2002.

Interstate commercial carrier sued state, alleging that state had collected registration fees in excess of those allowed by federal law under the Intermodal Surface Transportation Efficiency Act (ISTEA). The Court of Claims granted carrier's motion for summary judgment, awarding partial refund plus interest. State appealed. The Court of Appeals, 231 Mich. App. 194, 585 N.W.2d 762, affirmed, and leave to appeal was granted. The Michigan Supreme Court, Weaver, C.J., 464 Mich. 21, 627 N.W.2d 236, reversed and remanded. Certiorari was granted. The United States Supreme Court, Justice O'Connor, held that Interstate Commerce Commission's (ICC's) interpretation of provision of the Intermodal Surface Transportation Efficiency Act (ISTEA) limiting registration fees that participating states could collect from motor carriers under the new single state registration system, so as to prevent participating states from collecting fees under the new system in excess of those actually charged and collected in light of fee waivers which states had granted pursuant to interstate reciprocity agreements, was permissible reading of statutory language and was entitled to deference.

Reversed and remanded.

Justice Stevens concurred in judgment and filed opinion.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, post, p. 379.

Charles A. Rothfeld, Washington, DC, for petitioner.

Austin C. Schlick, Washington, DC, for United States as amicus curiae, by special leave of the Court, supporting the petitioner.

Thomas L. Casey, Lansing, MI, for respondents.

Justice O'CONNOR delivered the opinion of the Court.

We granted certiorari in this case, 534 U.S. 1112, 122 S.Ct. 918, 151 L.Ed.2d 883 (2002), to determine whether the Michigan Supreme Court erred in holding that, under 49 U.S.C. §14504(c)(2)(B)(iv)(III), only a State's "generic" fee is relevant to determining the fee that was "collected or charged as of November 15, 1991."

I

A

Beginning in 1965, Congress authorized States to require interstate motor carriers operating within their borders to register with the State proof of their Interstate Commerce Commission (ICC) interstate operating permits. Pub.L. 89-170, 79 Stat. 648, 49 U.S.C. §302(b)(2) (1970 ed.). Congress provided that state registration requirements would not constitute an undue burden on interstate commerce so long as they were consistent with regulations promulgated by the ICC. Ibid. Prior to 1994, the ICC allowed States to charge interstate motor carriers

annual registration fees of up to $10 per vehicle. See 49 CFR § 1023.33 (1992). As proof of registration, participating States would issue a stamp for each of the carrier's vehicles. §1023.32. The stamp was affixed on a "uniform identification cab car[d]" carried in each vehicle, within the square bearing the name of the issuing State. §1023.32(d)-(e). This system came to be known as the "bingo card" system. *Single State Insurance Registration*, 9 I.C.C.2d 610 (1993).

The "bingo card" regime proved unsatisfactory to many who felt that the administrative burdens it placed on carriers and participating States outweighed the benefits to those States and to the public. H.R.Rep. No. 102-171, pt. I, p. 49 (1991); H.R. Conf. Rep. No. 102-404, pp. 437-438 (1991), U.S.Code Cong. & Admin.News 1991, pp. 1526, 1679. In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Congress therefore directed the ICC to implement a new system to replace the "bingo card" regime. [1]* See Pub.L. 102-240, § 4005, 105 Stat.1914, 49 U.S.C. § 11506(c) (1994 ed.). Under the new system, called the Single State Registration System, "a motor carrier [would be] required to register annually with only one State," and "such single State registration [would] be deemed to satisfy the registration requirements

[1] Congress abolished the ICC in 1995 and assigned responsibility for administering the new Single State Registration System to the Secretary of Transportation. See ICC Termination Act of 1995, Pub.L. 104-88, §101, 109 Stat. 803. The provisions of ISTEA governing the system were amended and recodified. See 49 U.S.C. §14504(c). The Federal Highway Administration, under the Secretary of Transportation, adopted the ICC regulations that implemented the Single State Registration System, 61 Fed.Reg. 54706, 54707 (1996), and the Federal Motor Carrier Safety Administration now has authority to administer the system, 49 U.S.C. § 113(f)(1)

of all other States." §11506(c)(1)(A) and (C). Thus, one State would – on behalf of all other participating States – register a carrier's vehicles, file and maintain paperwork, and collect and distribute registration fees. §11506(c)(2)(A). Participation in the Single State Registration System was limited to those States that had elected to participate in the "bingo card" system. § 11506(c)(2)(D).

ISTEA also capped the per-vehicle registration fee that participating States could charge interstate motor carriers. Congress directed the ICC to

> "establish a fee system . . . that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." §11506(c)(2)(B)(iv).

Congress provided that the charging or collection of any fee not in accordance with the ICC's fee system would "be deemed to be a burden on interstate commerce." §11506(c)(2)(c).

The ICC issued its final implementing regulations in May 1993 after notice-and-comment proceedings. *Single-State Insurance Registration, supra*. The rulemaking gave rise to the central question in this case: whether, under the Single State Registration System, States were free to terminate "reciprocity agreements" that were in place under the "bingo card" regime. *Id.*, at 617-619. Under these agreements, in exchange for reciprocal treatment, some States discounted or waived registration fees for carriers from other States. *Id.*, at 617.

In issuing a set of proposed rules and soliciting further comments, the ICC questioned whether it had the power to require States to preserve pre-existing reciprocity agreements. Single State Insurance Registration, No. MC-100 (Sub-No. 6), 1993 WL 17833, *12 (Jan. 22, 1993); see Single State Insurance Registration – 1993 Rules, 9 I.C.C.2d 1, 11 (1992). It noted that these agreements were voluntary and mutually beneficial and commented that "as long as no carrier is charged more than [a State's] standard November 15, 1991, fee for all carriers (subject to the $10 limit), the requirements of [ISTEA] are satisfied." 1993 WL 17833, *12.

In its final implementing regulations, however, the ICC concluded, in light of further comments, that its preliminary view on reciprocity agreements was inconsistent with ISTEA's fee-cap provision and with "the intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced." *Single State Insurance Registration*, 9 I.C.C.2d, at 618. The agency therefore determined that States participating in the Single State Registration System "must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991, as required by §11506(c)(2)(B)(iv)." Id., at 618-619; see also *American Trucking Associations – Petition for Declaratory Order – Single State Insurance Registration*, 9 I.C.C.2d 1184, 1192, 1194-1195, 1993 WL 483607 (1993). The National Association of Regulatory Utility Commissioners (NARUC) and 18 state regulatory commissions sought review of the ICC's determination and certain provisions of the Single State Registration System regulations. *NARUC v. ICC*, 41 F.3d 721 (C.A.D.C.1994). The United States Court of Appeals

for the District of Columbia concluded that the plain language of the statute supported the ICC's determination that States participating in the new system must consider reciprocity agreements under 49 U.S.C. §11506(c)(2)(B)(iv). 41 F.3d, at 729.

B

Prior to the implementation of the Single State Registration System, Michigan had participated in the "bingo card" regime. See App. 5 (Affidavit of Thomas R. Lonergan, Director, Motor Carrier Regulation Division of the Michigan Public Service Commission ¶3e) (hereinafter Lonergan Affidavit). The Michigan Legislature had directed the Michigan Public Service Commission to levy an annual registration fee of $10 per vehicle on interstate motor carrier vehicles and simultaneously endowed the commission with authority to "enter into a reciprocal agreement with a state." Mich. Comp. Laws Ann. §478.7(4) (West 1988). Pursuant to such reciprocal agreements, the commission was empowered to "waive the fee [otherwise] required." Ibid. Petitioner in this case is an interstate trucking company headquartered in Kansas. For calendar years 1990 and 1991, the Michigan Public Service Commission did not levy a fee for petitioner's trucks that were licensed in Illinois pursuant to its policy "not to charge a fee to carriers with vehicles registered in states . . . which did not charge Michigan-based carriers a fee." App. 6 (Lonergan Affidavit ¶3i). In 1991, however, the Michigan Public Service Commission announced a change in its reciprocity policy to take effect on February 1, 1992. Under the new policy, the commission granted reciprocity treatment based on the policies of the State in which a carrier maintained its principal place of business rather than the

State in which individual vehicles were licensed. Because Michigan had no reciprocal arrangement with Kansas, the Michigan Public Service Commission sent petitioner a bill in September 1991, levying a fee of $10 per vehicle for the 1992 registration year on petitioner's entire fleet, with payment due on January 1, 1992. Petitioner paid the fees in October 1991 under protest and later brought suit in the Michigan Court of Claims seeking a refund of the fees it paid for its Illinois-licensed vehicles after the Single State Registration System came into effect. See 49 U.S.C. §11506(c)(3) (1994 ed.) (setting effective date of January 1, 1994). Petitioner alleged that, because Michigan had not "collected or charged" a fee for the 1991 registration year for trucks licensed in Illinois, ISTEA's fee-cap provision prohibits Michigan from levying a fee on Illinois-licensed trucks.

On cross motions for summary disposition, the Michigan Court of Claims ruled in favor of petitioner. Yellow Freight System, Inc. v. Michigan, No. 95-15706-CM (Mar. 13, 1996) (Yellow Freight System I). The Court of Claims' holding relied on an ICC declaratory order in which the agency held that ISTEA's fee-cap provision caps fees at the level "collected or charged" for registration year 1991, not those fees levied for registration year 1992 in advance of the statutory cutoff date. *Id.*, at 3-4; see *American Trucking Associations, supra*, at 1192, 1195.

The Michigan Court of Appeals affirmed on similar grounds. *Yellow Freight System, Inc. v. Michigan*, 231 Mich. App. 194, 585 N.W.2d 762 (1998) (Yellow Freight System II). The Court of Appeals also rejected Michigan's argument that States need not consider reciprocity agreements in determining the level of fees "charged or collected as of November 15, 1991," noting that the ICC had determined

reciprocity agreements must be considered, and that the agency's decision had been upheld in *NARUC v. ICC, supra*. *Yellow Freight System II, supra*, at 202-203, 585 N.W.2d, at 766.

The Michigan Supreme Court reversed. *Yellow Freight System, Inc. v. Michigan*, 464 Mich. 21, 627 N.W.2d 236 (2001) (Yellow Freight System III). The court concluded that "reciprocity agreements are not relevant in determining what fee [a State] 'charged or collected' as of November 15, 1991." Id., at 33, 627 N.W.2d, at 242. The court expressly rejected the District of Columbia Circuit's contrary conclusion. Id., at 29, 627 N.W.2d, at 240 (citing *NARUC v. ICC, supra*). The Court applied *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), but determined that the statute unambiguously forbids the ICC's interpretation. *Yellow Freight System III*, 464 Mich., at 29-31, 627 N.W.2d, at 240-241. Reasoning that "[t]he new 'fee system' is based not on the fees collected from one individual company, but on the fee system that the state had in place on November 15, 1991," the court concluded that "[w]e must look not at the fees paid by [petitioner] in any given year, but at the generic fee Michigan charged or collected from carriers as of November 15, 1991." *Id.*, at 31, 627 N.W.2d, at 241 (emphasis added). Two justices dissented, finding ISTEA's fee-cap provision ambiguous, the ICC's construction reasonable, and deference therefore due. *Id.*, at 33-43, 627 N.W.2d, at 242-247 (opinions of Kelly and Cavanagh, JJ.).

The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had

"canceled its reciprocity agreements with other States in 1989." Brief for United States as Amicus Curiae 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991.

II

[1] Neither party disputes that *Chevron, supra*, governs the interpretive task at hand. In ISTEA, Congress made an express delegation of authority to the ICC to promulgate standards for implementing the new Single State Registration System. 49 U.S.C. §11506(c)(1) (1994 ed.). The ICC did so, interpreting ISTEA's fee-cap provision subsequent to a notice-and-comment rulemaking. See *United States v. Mead Corp.*, 533 U.S. 218, 229, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001) ("[A] very good indicator of delegation meriting Chevron treatment [is an] express congressional authorizatio[n] to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed"). The Federal Highway Administration adopted the ICC's regulations, see supra, at 374, n., and the Single State Registration System is now administered by the Federal Motor Carrier Safety Administration. 49 U.S.C. §113.

[2] Accordingly, the question before us is whether the text of the statute resolves the issue, or, if not, whether the ICC's interpretation is permissible in light of the deference to be accorded the agency under the statutory scheme. If the statute speaks clearly "to the precise question at issue," we "must give effect to the unambiguously expressed intent of Congress." Chevron, 467 U.S., at 842-843, 104 S.Ct.

2778. If the statute is instead "silent or ambiguous with respect to the specific issue," we must sustain the agency's interpretation if it is "based on a permissible construction of the statute." *Id.*, at 843, 104 S.Ct. 2778; see *Barnhart v. Walton*, 535 U.S. 212, 217-218, 122 S.Ct. 1265, 152 L.Ed.2d 330 (2002).

ISTEA's fee-cap provision does not foreclose the ICC's determination that fees charged under States' pre-existing reciprocity agreements were, in effect, frozen by the new Single State Registration System. The provision requires that the new system "result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III). The language "collected or charged" can quite naturally be read to mean fees that a State actually collected or charged. The statute thus can easily be read as the ICC chose, making it unlawful "for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system." *American Trucking Associations*, 9 I.C.C.2d, at 1194; see *Single State Insurance Registration*, 9 I.C.C.2d, at 618-619.

The Michigan Supreme Court held that the language of ISTEA's fee-cap provision compels a different result. Although it acknowledged that ISTEA is silent with respect to reciprocity agreements, the court nonetheless concluded that the fee-cap provision mandates that those agreements have no bearing in the determination of what fee a State "collected or charged" as of November 15, 1991. *Yellow Freight System III*, 464 Mich., at 31, 627 N.W.2d, at 241. The court reasoned that the Single State Registration System was "based not on the fees collected from one

individual company, but on the fee system that the state had in place." Ibid. (emphasis added). While such a reading might be reasonable, nothing in the statute compels that particular result. The fee-cap provision refers not to a "fee system," but to the "fee . . . collected or charged." 49 U.S.C. §14504(c)(2)(B)(iv)(III). Under the ICC's rule, where a State waives its registration fee, its "fee . . . collected or charged" is zero and must remain zero. The ICC's interpretation is a permissible reading of the language of the statute. And, because there is statutory ambiguity and the agency's interpretation is reasonable, its interpretation must receive deference. See *Chevron, supra*, at 843, 104 S.Ct. 2778.

As commenters to the ICC during the rulemaking pointed out, to allow States to disavow their reciprocity agreements so as to alter any fee charged or collected as of November 15, 1991, would potentially permit States to increase their revenues substantially under the new system, a result that the ICC quite reasonably believed Congress did not intend. See *Single State Insurance Registration*, 9 I.C.C.2d, at 618. The ICC concluded that its rule best served the "intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced." Ibid. The agency considered that allowing States to disavow reciprocity agreements and charge a single, uniform fee might reduce administrative burdens, but expressed concern that carriers' registration costs, and state revenues, would balloon. Ibid. (noting that some carriers' fees "assertedly could increase as much as 900%," and that one commenter presented a "worst case scenario" in which "State revenues could increase from $50 million to $200 million").

Respondents argue that Congress intended for each State to set a single, uniform fee. While such a mandate would, indeed, have simplified the new system, it is not compelled by the language of the statute, which instructs the ICC to implement a system under which States charge a fee, not to exceed $10 per vehicle, that is equal to the fee such States "collected or charged as of November 15, 1991."

Respondents also contend that, by freezing the fees charged under reciprocity agreements as part of the fee cap, the ICC added a constraint not within the express language of the statute. The Michigan Supreme Court expressed a similar concern, stating that "[i]t is not for the ICC . . . to insert words into the statute." 464 Mich., at 32, 627 N.W.2d, at 241-242. It was precisely Congress' command, however, that the ICC promulgate standards to govern the Single State Registration System, 49 U.S.C. §11506(c) (1994 ed.), and it was thus for that agency to resolve any ambiguities and fill in any holes in the statutory scheme. See *Mead Corp., supra*, at 229, 121 S.Ct. 2164; *Chevron, supra*, at 843-844, 104 S.Ct. 2778. To hold States to the fees they actually collected or charged seems to us a reasonable interpretation of the statute's command that state fees be "equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III).

Respondents argue that the ICC's rule contravenes ISTEA's fee-cap provision by limiting what a State can charge based on what was collected from or charged to a particular carrier. Respondents point out that the focus of the provision is on the actions of the State, not the actions of any particular carrier. While we agree that the statute focuses on what States "collected or charged" rather than

what particular carriers paid, we do not agree that the ICC's rule focuses the inquiry on the latter. Under the "bingo card" regime, States entered into reciprocity agreements that waived or reduced fees charged to particular categories of vehicles. The ICC's rule does not necessarily cap the aggregate fee paid by any particular carrier; rather, it simply requires States to preserve fees at the levels they actually collected or charged pursuant to reciprocity agreements in place as of November 15, 1991.

Because the ICC's interpretation of ISTEA's fee-cap provision is consistent with the language of the statute and reasonably resolves any ambiguity therein, see *Chevron*, 467 U.S., at 843, 104 S.Ct. 2778, the Michigan Supreme Court erred in declining to enforce it.

The judgment is therefore reversed, and the case is remanded to the Michigan Supreme Court for further proceedings not inconsistent with this opinion.

It is so ordered.

CONCURRING OPINION

Justice STEVENS, concurring in the judgment.

In my opinion there is no ambiguity in the relevant provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In that Act, Congress delegated to the Interstate Commerce Commission (ICC) the power to prescribe "standards" and "amendments to standards" that would create a "Single State Registration System." 49 U.S.C. §11506 (1994 ed.). As a part of that delegation, the ISTEA gave the ICC broad authority to establish a "fee system" that would comply with three conditions, the third

of which contained two requirements[1]. The fee for each participating State (1) may not exceed $10 per vehicle and (2) must be equal to the fee that the State "collected or charged as of November 15, 1991." §11506(c)(2)(B)(iv)(III).

Because Michigan had both collected and charged a $10 fee in 1991 – and continued to do so thereafter – the Michigan Public Service Commission did not violate either of those statutory requirements when it changed its method of determining reciprocity with respect to individual carriers[2]. Indeed, the essential features of Michigan's fee system for 1992 were the same as they were in 1991: The amount of the fee that the "State collected or charged" was $10 per vehicle both before and after November 15, 1991; that fee was assessed on exactly the same kinds of vehicles both before and after that date; the State had reciprocal arrangements, providing for either a discount or

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[1] "(B) RECEIPTS; FEE SYSTEM. – Such amended standards –

. . . .

"(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . . " 49 U.S.C. §11506(c)(2)(B)(iv) (1994 ed.)

[2] As explained by the majority, ante, at 376, Michigan changed its policy from determining reciprocity with respect to an individual vehicle based on where that vehicle was registered and had obtained a license plate to determining reciprocity based on where the trucking company that owned the individual vehicle maintained its principal place of business.

a waiver of the fee with the same States in 1992 that it did in 1991.

Michigan did, however, violate an additional requirement imposed by the ICC when the State modified its method of determining the home State of out-of-state vehicles. That agency-imposed requirement effectively precluded a State from making a systemic change that would significantly increase its revenues. I think it clear that the statutory delegation of power to the ICC to "establish a fee system" was broad enough to include the power to impose additional requirements to ensure that a State would not impose a "burden on interstate commerce." See §11506(c)(2)(B)(iv), (c)(2)(C). The rulemaking proceeding confirmed the ICC's power to require the States to preserve pre-existing reciprocity agreements to avoid a scenario in which "some States would realize windfalls." *Single State Insurance Registration*, 9 I.C.C.2d 610, 618 (1993) (responding to comment alleging, among other things, that if reciprocity agreements were discontinued, "State revenues could increase from $50 million to $200 million"); see ante, at 375. Although Michigan did not abandon any reciprocity agreement, I think it equally clear that the ICC could prohibit a change in the method of implementing those agreements that would significantly increase a State's revenues, and therefore threaten to burden commerce[3].

[3] Not every change in how reciprocity is determined would lead to an increase in a State's revenues. Indeed, it may be that a State's revenues would decrease after making such a change. I am satisfied, however, that the potential for an increase in these circumstances is a sufficient threat to burden commerce within the meaning of the statute.

Thus, I concur in the Court's judgment because the statute authorized the ICC to decide that the States' pre-existing reciprocity agreements should, in effect, be "frozen." I do not, however, believe that the statute mandated that result. Nor do I believe that the additional constraint imposed by the ICC should be upheld as a permissible construction of subsection (c)(2)(B)(iv)(III). Rather, in my opinion, it was a permissible exercise of the broad authority vested in the ICC to "establish a fee system" that would not create "a burden on interstate commerce." See §11506(c)(2)(B)(iv), (c)(2)(C). It is on this basis that I concur in the judgment of the Court.